



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,130	02/02/2001	Dimitra G. Gerogianni	020431.0739	9365

7590 01/07/2005

Baker Botts L.L.P.
Suite 600
2001 Ross Avenue
Dallas, TX 75201-2980

EXAMINER

SAETHER, FLEMMING

ART UNIT PAPER NUMBER

3677

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/776,130	Applicant(s) GEROGIANNI, DIMITRA G.	
	Examiner Flemming Saether	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

In response to applicant's Appeal Brief filed 20 October 2004 the examiner has chosen to re-open prosecution for a couple of reasons: first, the duplication of claims 14 and 15 led to them being inadvertently omitted in the Final Office; second, and more important, applicant failed to follow the new rules of practice before the BPAI effective 13 September 2004. Specifically, applicant did not follow the new rule 41 regarding the content and format of the appeal. See §41.37 of the Federal Register/Vol. 69, No. 155/Thursday, August 12, 2004/Rules and Regulations.

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/part41.pdf>

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13-21, 23-34, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Hanson (US 4,971,409) and Harrington (US 5,895,454). Cupps discloses the general concept of brokering food orders over the Internet wherein a plurality of buyers have access to a database of a plurality of unaffiliated restaurants that deliver food (Fig. 1 and 7). Each of the buyers inputs their location and the broker displays restaurants that deliver to that location and indicates specials (Fig. 8). Each of the restaurants displays a menu of available food items and price (Fig. 9), any one of which may be considered "special". Once an item is

Art Unit: 3677

found, the buyer initiates a transaction and is given a response or confirmation from the restaurant which includes a delivery time (column 11, line 26-27). The delivery time is real time and inherently would include any backlog on the part of the seller since the seller is the one providing the delivery time (column 11, line 11-12). Cupps does not disclose the real time delivery time being provide prior to a selection be made by the customer. Hanson discloses a food order and delivery system wherein the real time delivery time, based at least in part on actual deliveries, is communicated to the customer as a transaction is being made (column 16, line 64-68) so the customer can take that into account prior to placing an order. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to communicate the real time delivery time to the customer in Cupps prior to the order being placed so that the customer could make a more informed decision. Modified Cupps does not disclose the real time delivery time communicated to the customer prior to a transaction being initiated. Harrington discloses a system using the internet where in addition to other criteria such as price etc... the delivery time is included to the customer in a hierarchical scheme, in other words rank, form a plurality of sellers for comparison to the customer so that a determination on purchasing an item can be based on the delivery time (column 5, lines 25-61). Harrington further teaches to provide alternatives to the customer if the criteria is not met (column 6, lines 4-9). At the time the invention was made, it would have been obvious for the person of ordinary skill in the art to communicate the real time delivery time to the customer in modified Cupps in a manner

Art Unit: 3677

as disclosed in Harrington so that delivery time could be used by the customer as criteria for determining which food item to order before beginning any transaction.

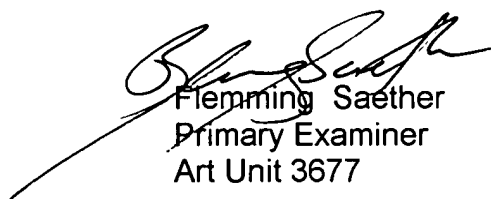
Claims 12, 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Hanson (US 4,971,409) and Harrington (US 5,895,454) as applied to claims 1, 13 and 24 above and further in view of Cotter (US 4,797,818). Cotter teaches the selection of a restaurant or seller for a delivery order automatically based on real time delivery time (column 2, line 2, line 21-31). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide for the automatic selection of a seller in modified Cupps based on real time delivery time as disclosed in Cotter in order to save time to the customer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3677

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Flemming Saether
Primary Examiner
Art Unit 3677